

REMARKS

In the May 13, 2010 Advisory Action, claims 5-14 stand rejected in view of prior art. No other objections or rejections were made in the Office Action.

Status of Claims and Amendments

In response to the May 13, 2010 Advisory Action and in further response to the January 19, 2010 final Office Action, Applicant has amended claims 5 and 9 as indicated above. Also, Applicant has added new claims 15 and 16. Thus, claims 5-16 are pending, with claims 5, 9, 15 and 16 being the only independent claims. Reexamination and reconsideration of the pending claims are respectfully requested in view of above amendments and the following comments.

Rejections - 35 U.S.C. § 102

The Advisory Action and the final Office Action indicate that claims 5 and 9 (as amended in the April 30, 2010 Amendment) will be rejected under 35 U.S.C. §102(b) as being anticipated by U.S. Patent Application Publication No. 2002/0072112 (Atwood). In response, Applicants have amended claims 5 and 9 to more clearly define the present invention over the prior art of record. This rejection is respectfully traversed, especially in view of these amendments, as explained below.

Specifically, independent claims 5 and 9 now require, *inter alia*, a relationship between said target value and said temperature inside said compartments being employed as said calibration data. These Amendments are supported at least by page 11, lines 17-19 of the specification. Contrary to the assertions of the Office Action, these arrangements are *not* disclosed or suggested by the Atwood publication.

It appears the "calibration data" in ATWOOD indicated in the Office Action is in fact "calibration constants" in view of the indications in [0096] in ATWOOD. While these "calibration constants" appear to be stored in a memory similarly to the present application, these "calibration constants" do not associate with the ambient temperature since how to be adopted is different from the present application. "Calibration constants" does not appear in

[0323] where the final Office Action indicates. [0323] indicates "calibration voltage generator 506" and this supplies a reference voltage to a multiplexer 494 (see FIG 47A(2)). That is, the so-called "calibration data" (which is in common with the present application in a point of being stored in the memory) disclosed in [0096] does not relate to [0323] in ATWOOD. Therefore, the Office Action's indication connecting [0096] and [0323] is inappropriate. Further, "calibration constants" is adopted for calibration of a temperature sensor in [0331] in ATWOOD. The critical temperatures are stable bath temperature 40°C and 95°C in that regard and does not associate with the ambient temperature. Thus, so-called "calibration data" in ATWOOD does not associate with the ambient temperature, as now required by independent claims 5 and 9.

It is well settled under U.S. patent law that for a reference to anticipate a claim, the reference must disclose each and every element of the claim within the reference. Therefore, Applicant respectfully submits that independent claims 5 and 9, as now amended, are not anticipated by the Atwood publication. Accordingly, withdrawal of this rejection is respectfully requested.

Rejections - 35 U.S.C. § 103

In the Advisory Action, specific rejections of claims 6-8 and 10-14 were not discussed. In the final Office Action, claims 6-8 and 10-14 were rejected under 35 U.S.C. §103(a) as follows:

- (1) Claims 2, 3, 6, 7, 10 and 11 are rejected as being unpatentable over the Atwood publication in view of U.S. Patent No. 5,802,856 (Schaper);
- (2) Claims 4, 8, 12 and 13 are rejected as being unpatentable over the Atwood publication in view of the Schaper patent and further in view of U.S. Patent No. 6,626,236 (Bandoh); and
- (3) Claim 14 is rejected as being unpatentable over
 - (a) the Atwood publication as applied to claims 1, 5 and 9, in view of Japanese Patent Publication No. 2003-235544 (Haga),

- (b) the Atwood publication in view of the Schaper patent as applied to claims 2, 3, 6, 7, 10 and 11, in view of Japanese Patent Publication No. 2003-235544 (Haga), and
- (c) the Atwood publication in view of the Schaper and Bando patents as applied to claims 4, 8, 12 and 13, and further in view of the Haga publication.

In response, Applicants have amended claims 5 and 9 as indicated above. These rejections are respectfully traversed as explained below.

Specifically, the Atwood publication fails to disclose or suggest the features of independent claims 5 and 9, as now amended, as explained above. The remaining references fail to account for the deficiencies of the Atwood publication with respect to independent claims 5 and 9. More specifically, the remaining references relied upon in rejections (1) to (3), the Schaper patent, the Bando patent and the Haga publication, do not disclose or suggest using *an ambient temperature of an environment in which the device is installed*, as now required by independent claims 5 and 9; using a second target value *obtained based on said target value and said calibration data in accordance with said ambient temperature* as required by independent claim 5; using a second target value *calculated based on said target value and calibration data in accordance with said ambient temperature* as required by independent claim 9; or *a relationship between said target value and said temperature inside said compartments being employed as said calibration data* as required by independent claims 5 and 9. Since none of the references used in these rejections discloses these unique arrangements, any hypothetical device created by somehow combining these references cannot include these unique arrangements of independent claims 5 and 9, as now amended. Therefore, no combination of the references relied upon in rejections (1) to (3) can disclose or suggest the arrangements of dependent claims 6-8 and 10-14, which depend from independent claims 5 and 9. Accordingly, withdrawal of rejections (1) to (3) of this section is respectfully requested.

Under U.S. patent law, the mere fact that the prior art can be modified does *not* make the modification obvious, unless an *apparent reason* exists based on evidence in the record or scientific reasoning for one of ordinary skill in the art to make the modification. See, KSR

Int'l Co. v. Teleflex Inc., 127 S.Ct. 1727, 1741 (2007). The KSR Court noted that obviousness cannot be proven merely by showing that the elements of a claimed device were known in the prior art; it must be shown that those of ordinary skill in the art would have had some "apparent reason to combine the known elements in the fashion claimed." *Id.* at 1741. The current record lacks any apparent reason, suggestion or expectation of success for combining the patents, and then further modifying a hypothetical device created by such a hypothetical combination, to create Applicant's unique arrangements of independent claims 5 and 9, as now amended.

New Claims

Applicant has added new claims 15 and 16 by the current Amendment. New claims 15 and 16 are similar to independent claims 5 and 9, respectively. However, claim 15 requires, *inter alia*, a control unit setting a target value for said temperatures inside said compartments, and controlling said heater and said cooling unit with a second target value that is obtained based on a relationship among said target value, said calibration data and said ambient temperature such that control of temperatures inside said compartments is corrected by using said ambient temperature measured by said thermometer; and independent claim 16 requires, *inter alia*, said calculation unit calculates a second target value based on a relationship among said target value, calibration data and said ambient temperature, and said control unit controls said heater and said cooling unit with said second target value such that control of temperatures inside said compartments is corrected by using said ambient temperature measured by said thermometer.

As mentioned above, it appears the "calibration data" in ATWOOD indicated in the Office Action is in fact "calibration constants" in view of the indications in [0096] in ATWOOD. While these "calibration constants" appear to be stored in a memory similarly to the present application, these "calibration constants" do **not** associate with *the ambient temperature* since how to be adopted is different from the present application. "Calibration constants" does not appear in [0323] where the final Office Action indicates. [0323] indicates "calibration voltage generator 506" and this supplies a reference voltage to a multiplexer 494 (see FIG 47A(2)). That is, "calibration data" (which is in common with the present application in a point of being stored in the memory) disclosed in [0096] does not

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relate to [0323] in ATWOOD. Therefore, the Office Action's indication connecting [0096] and [0323] is inappropriate. Further, "calibration constants" is adopted for calibration of a temperature sensor in [0331] in ATWOOD. The critical temperatures are stable bath temperature 40°C and 95°C in that regard and does not associate with the ambient temperature. Thus, so-called "calibration data" in ATWOOD does not associate with the ambient temperature, as required by independent claims 15 and 16.

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In view of the foregoing amendment and comments, Applicant respectfully asserts that claims 5-14 are now in condition for allowance. Reexamination and reconsideration of the pending claims are respectfully requested. If there are any questions regarding this Amendment, please feel free to contact the undersigned.

Respectfully submitted,

/Patrick A. Hilsmier/
Patrick A. Hilsmier
Reg. No. 46,034

GLOBAL IP COUNSELORS, LLP
1233 Twentieth Street, NW, Suite 700
Washington, DC 20036
(202)-293-0444

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